UNIVERSITY OF TORONTO
FACULTY OF LAW

BORA LASKIN LAW LIBRARY
3 1761 06110080 6

CONSTITUTIONAL LAW "A"

PROFESSOR L. WEINRIB

FACULTY OF LAW, UNIVERSITY OF TORONTO

2009-10

VOLUME I

Storage
KE
4218.5
.W45
2009
v.1
c.1

BORA LASKIN LAW LIBRARY
SEP - 2 2009
FACULTY OF LAW

CONSTITUTIONAL LAW "A"

PROFESSOR L. WEINRIB

FACULTY OF LAW, UNIVERSITY OF TORONTO

2009-10

VOLUME I

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/constitutionalla01wein

CANADIAN CONSTITUTIONAL LAW
L WEINRIB VOL I (2009-10)

CHAPTER 1: CONSTITUTIONALISM AND CONSTITUTIONAL LAW

John Stuart Mill, *On Liberty* at 3 ff. 1
Louis Henkin, "Elements of Constitutionalism"....4
Catherine Elliott & Frances Quinn (eds.), *English Legal System* 11
O. Hood Phillips and P. Jackson, "Written and Unwritten Constitutions" 14
"The Crown", *Town Investments Ltd. v. Dept of Environment*, [1978] A.C. 359 15
W.I. Jennings, *The Law and the Constitution* 16

CHAPTER 2: INTRODUCTION TO CANADA'S CONSTITUTION

Ronald Watts, Comparing *Fed'l Systems in the 1990's* 18
Keith S. Rosenn, "Federalism in the Americas in Comparative Perspective"....22
Barry Strayer, *The Canadian Constitution and the Courts: The Function and Scope of Judicial Review*, 3 ed. 27
Paul Weiler, *In the Last Resort* (Toronto: Carswell, 1974) at 164 ff. 30
Ronald Watts, *Comparing Fed'l Systems in the 1990's* 31
The Secession Reference, [1998] 2 S.C.R. 217 33

CHAPTER 3: THE QUASI-COLONIAL PERIOD

A. Introductory Readings

Garth Stevenson, *Unfulfilled Union: Canadian Federalism and National Unity* at 45ff 43
British Coal Corporation v. The King, [1935] A.C. 500 53

B. "The Race Cases"

James W. St. G. Walker, "Quong v. The King" 54
Union Colliery Company of British Columbia v. Bryden, [1899] A.C. 580....75
Cunningham and AG BC v. Tomey Homma and Attorney-General Canada [1903] A.C. 151....77
Quong Wing v. The King, 49 S.C.R. 440 79
James W. St. G. Walker, "Quong Wing and Quong Sing" 82
Bushnell, "*Reference Re Deportation of Japanese, 1946*" 98
Scott, "The Deportation of the Japanese Canadians: An Open Letter to the Press" 102

C. Economic Regulation

The King v. Eastern Terminal Elevator Co., [1925] S.C.R. 434....104
MacDonald, "The Privy Council and the Canadian Constitution" 108

CHAPTER 4: MOVING TOWARDS POLITICAL & CONSTITUTIONAL INDEPENDENCE: EARLY READINGS OF THE B.N.A. ACT AS A CONSTITUTION

A. Women in Public Life

Rex v. Cyr, [1917] 3 W.W.R. 849 113
Reference re Meaning of the Word "Persons" in s. 24 of the B.N.A. Act, [1928] S.C.R. 276 – "the *Persons Case*"....118
Lord Brougham's Act, 1850 ("An Act for shortening the language...) 121
Edwards et al. v. AG Canada [1930] A.C. 124 – "the *Persons Case*"....122

B. The Treaty Making Power

In re the Regulation and Control of Aeronautics in Canada, [1932] A.C. 54....126
In re Regulation& Control of Radio Communications..., [1932] A.C. 304....130
Reference re Weekly Rest in Industrial Undertakings Act, Minimum Wages Act and Limitations of Hours Act, [1937] 1 D.L.R. 673....132

C. Interpreting a Written Constitution

Bushnell, "The Privy Council and Mr. Bennett's New Deal Legislation" 134
A.G. Ontario v. A.G. Canada, [1947] A.C. 127 140
Ref. re Remuneration of Judges of the Provincial Court of Prince Edward Island, [1997] 3 S.C.R. 3 (the "Judges Remuneration Reference")....143
Kommers and Finn, "Sources and Methods of Interpretation"....146

CHAPTER 5: MODERN FEDERALISM
A. Overview
Canadian Western Bank v. Alberta, 2007 SCC 22, [2007] 2 S.C.R. 3.....157
Reference re Employment Insurance Act (Can.), ss. 22 and 23, [2005] 2 S.C.R. 669.....160

B. Criminal Law and Property and Civil Rights
Proprietary Articles Trade Association v. A.G. Canada, [1931] 2 D.L.R. 1.....179
Re Validity of Section 5(a) of the Dairy Industry Act (The Margarine Reference) [1949] S.C.R. 1 189.....180
R. v. Morgentaler, [1993] 3 S.C.R. 463.....181
Reference re Firearms Act, [2000] 1 S.C.R. 783.....187
R. v. Hydro-Québec, [1997] 3 S.C.R. 213.....195
Note: *Chatterjee v. Ontario (Attorney General)*, 2009 SCC 19.....200

C. Trade and Commerce & Property and Civil Rights
Carnation v Quebec Agricultural Marketing Board [1968] S.C.R. 238 201
Caloil Inc. v. A.G. Canada, [1971] S.C.R. 543 205
General Regulation of Trade: *GM v. City National Leasing*, [1989] 1 S.C.R. 641.....207
Proposal for National Securities Regulator 217

D. Peace, Order and Good Government (POGG)
Bushnell, "*Reference re Anti-Inflation Act, 1976*" 224
Re: Anti-Inflation Act, [1976] 2 S.C.R. 373.....228
R. v. Crown Zellerbach Canada Ltd., [1988] 1 S.C.R. 401 238
Note: *Malmo-Levine*, [2003] 3 S.C.R. 571.....244

E. Paramountcy
Multiple Access Ltd. v. McCutcheon, [1982] 2 S.C.R. 161.....245
Bank of Montreal v. Hall, [1990] 1 S.C.R. 121.....247
Husky Oil Operations Ltd. v. M.N.R., [1995] 3 SCR 453 250
Rothmans, Benson & Hedges Inc. v. Sask, [2005] 1 S.C.R. 188, 250 D.L.R. (4th) 411....252
Note: *Law Society of British Columbia v. Mangat*, [2001] 3 S.C.R. 113.....255

F. Interjurisdictional Immunity
Canadian Western Bank v. Alberta, 2007 SCC 22, [2007] 2 S.C.R. 3.....256

CHAPTER 6: "Indians and Lands Reserved to the Indians"
The Royal Proclamation of 1763 (excerpt).....266
Constitution Act, 1867 (U.K.), 30 & 31 Vict., c. 3, s. 91(24).....267
Report of The Royal Commission on Aboriginal People (1996) (excerpt).....268
Ryder, "The Demise and Rise of the Classical Paradigm in Canadian Federalism" 274
Macklem, "The Distribution of Legislative Authority" (1991) McGill L.J. 283.....286
Fleras & Elliott, "The Dept of Indian Affairs: From Bureaucracy to Empowerment?" 292
Llewellyn, "Dealing with the Legacy of Native Residential School Abuse..."....295
Guerin v. The Queen, [1984] 2 S.C.R. 335 298